

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 853 Beer or Malt Beverages  
**SPONSOR(S):** Goodson and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** CS/SB 1040

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Careers & Competition Subcommittee		Willson	Anstead
2) Commerce Committee			

### SUMMARY ANALYSIS

Section 561.42, F.S., the "Tied House Evil Law," prohibits a manufacturer or distributor from having a financial interest, directly or indirectly, in the establishment or business of a licensed vendor, and prohibits a manufacturer or distributor from giving gifts, loans, property, or rebates to retail vendors.

Specifically, if a manufacturer, distributor, importer, brand owner, or brand registrant of malt beverage, or any sales agent or sales person thereof, provides a vendor with expendable retailer advertising specialties such as trays, coasters, mats, menu cards, napkins, cups, glasses, thermometers, and the like, such items may be sold only at a price not less than the actual cost to the industry member who initially purchased them, without limitation in total dollar value of such items sold to a vendor.

The bill amends s. 561.42(14), F.S., to exempt "branded glassware" given to a vendor by a manufacturer or importer from the restriction requiring a vendor to pay the manufacturers or importers actual cost for such glasses. The bill will allow a manufacturer or importer to "give" or sell beer or malt beverage branded glassware to a vendor licensed to sell beer or malt beverages for on-premises consumption. Non-branded glassware, as well as branded glassware furnished by a licensee other than a manufacturer or importer, remains subject to the tied house evil prohibition in current law.

The bill does not have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2017.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

In Florida, the Beverage Law<sup>1</sup> regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors.<sup>2</sup> The Division of Alcoholic Beverages and Tobacco in the Department of Business and Professional Regulation (DBPR) administers and enforces the Beverage Law.<sup>3</sup>

##### Three-Tier System and Tied House Evil

Since the repeal of Prohibition, regulation of alcohol in the United States has traditionally been based upon what is termed the “three-tier system.” The system requires separation of the manufacture, distribution, and sale of alcoholic beverages. The manufacturer creates the beverages, and the distributor obtains the beverages from the manufacturer to deliver to the vendor. The vendor makes the ultimate sale to the consumer.<sup>4</sup>

Generally, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.<sup>5</sup> A manufacturer, distributor, or exporter may not be licensed as a vendor to sell directly to consumers.<sup>6</sup> Manufacturers are also generally prohibited from having an interest in a vendor and from distributing directly to a vendor.<sup>7</sup>

The three-tier system is deeply rooted in the perceived evils of the “tied house” in which a bar is owned or operated by a manufacturer or the manufacturer exercises undue influence over the retail vendor.<sup>8</sup>

Florida’s Tied House Evil Law **prohibits** a licensed manufacturer or distributor from having any direct or indirect financial interest in any vendor, from assisting any vendor through gifts, loans, money or property of any description, and from giving any rebates of any kind whatsoever. A manufacturer or distributor is also prohibited from engaging in cooperative advertising with a vendor and may not name a vendor in any advertisement for a malt beverage tasting.<sup>9</sup>

However, the Tied House Evil Law **authorizes** a manufacturer, distributor, importer or registrant of malt beverage to sell expendable retailer advertising specialties (such as trays, coasters, mats, menu cards, napkins, cups, glasses, thermometers, and the like), to a vendor at a price not less than the actual cost to the industry member who initially purchased them.<sup>10</sup>

Currently, if an industry member provides a vendor with glasses, the vendor must pay at least the actual cost to the industry member. Specifically, s. 561.42 (14), F.S., provides that:

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<sup>1</sup> Section 561.01(6), F.S., provides that the “The Beverage Law” means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

<sup>2</sup> See s. 561.14, F.S.

<sup>3</sup> s. 561.02, F.S.

<sup>4</sup> s. 561.14, F.S.

<sup>5</sup> s. 561.14(3), F.S. However, see the exceptions provided in ss. 561.221 and 565.03, F.S.

<sup>6</sup> s. 561.22(1), F.S.

<sup>7</sup> ss. 563.022(14) and 561.14(1), F.S.

<sup>8</sup> Erik D. Price, *Time to Untie the House? Revisiting the Historical Justifications of Washington’s Three-Tier System Challenged by Costco v. Washington State Liquor Control Board*, (June 2004), [http://www.lanepowell.com/wp-content/uploads/2009/04/pricee\\_001.pdf](http://www.lanepowell.com/wp-content/uploads/2009/04/pricee_001.pdf).

<sup>9</sup> s. 561.42, F.S.

<sup>10</sup> s. 561.42(14), F.S.

The division shall adopt reasonable rules governing promotional displays and advertising, which rules shall not conflict with or be more stringent than the federal regulations pertaining to such promotional displays and advertising furnished to vendors by distributors, manufacturers, importers, primary American sources of supply, or brand owners or registrants, or any sales agent or sales person thereof; however:

(a) If a manufacturer, distributor, importer, brand owner, or brand registrant of malt beverage, or any sales agent or sales person thereof, provides a vendor with expendable retailer advertising specialties such as trays, coasters, mats, menu cards, napkins, cups, **glasses**, thermometers, and the like, such items may be sold only at a price not less than the actual cost to the industry member who initially purchased them, without limitation in total dollar value of such items sold to a vendor.

### **Effect of the Bill**

The bill amends s. 561.42(14), F.S., exempting "branded glassware" given to a vendor by a manufacturer or importer from the restriction requiring a vendor to pay the manufacturers or importers actual cost for such glasses. The bill allows a manufacturer or importer to "give" or sell beer or malt beverage branded glassware to a vendor licensed to sell beer or malt beverages for on-premises consumption.

Non-branded glassware, as well as branded glassware furnished by other than a manufacturer or importer, remain subject to the tied house evil prohibition in current law.

#### **B. SECTION DIRECTORY:**

Section 1      Amends s. 561.42, F.S.; authorizing a manufacturer or importer of beer or malt beverages to give or sell specified glassware to vendors licensed to sell beer or malt beverages for on-premises consumption.

Section 2      Provides an effective date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

None

##### **2. Expenditures:**

None

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

##### **1. Revenues:**

None

##### **2. Expenditures:**

None

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Vendors will be able to obtain branded glassware at a reduced cost or at no cost. The potential would exist for a vendor to benefit from the sale of the branded glassware received for free from a manufacturer or importer or benefit from the sale at a price greater than the acquisition cost. These glasses could also be given away to customers in exchange for purchases.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

Not Applicable. This bill does not appear to affect county or municipal governments.

**2. Other:**

None

**B. RULE-MAKING AUTHORITY:**

None

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

The bill allows manufacturers and importers to give or sell beer or malt beverage branded glassware to beer or malt beverage vendors, while distributors, brand owners, and brand registrants would not enjoy such an exemption to tied house prohibitions.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**